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Paper No. 11

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JUL 18 2002

**OFFICE OF PETITIONS**

In re Application of  
Wodzianek, et al.  
Application No. 10/017,212  
Filed: December 13, 2001  
Attorney Docket No. 034300-168

DECISION GRANTING  
PETITION

This is a decision on (1) the petition, filed February 6, 2002, requesting, in effect, withdrawal of the January 23, 2002 Notice to File Omitted Item(s) in a Nonprovisional Application (Notice) insofar as it pertains to allegedly omitted drawing figure 8 and (2) the petition, filed April 22, 2002, requesting, in effect, withdrawal of the March 7, 2002 Notice to File Corrected Application Papers insofar as it pertains to allegedly omitted drawing figure 5. The petitions will be treated under 37 CFR 1.53(e).

The application was deposited on December 13, 2001. On January 23, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that drawing figure 8 described in the specification appeared to have been omitted.

Petitioners filed the February 6, 2002 petition to contest the allegation that drawing figure 8 was omitted.

On March 7, 2002, the Office of Initial Patent Examination withdrew the January 23, 2002 Notice because drawing figure 8 was present in the application file and issued a Notice to File Corrected Application Papers informing petitioners that drawing figure 5 appeared to have been omitted and requiring petitioners to file substitute drawings in compliance with 37 CFR 1.84.

**Accordingly, the petition under 37 CFR 1.53(e), filed February 6, 2002, is dismissed as moot.**

In response to the March 7, 2002 Notice to File Corrected Application Papers, petitioners filed the April 22, 2002 petition and submitted 9 sheets of substitute drawings. Petitioners request that drawing figure 5 be accorded a filing date of December 13, 2001 on the basis that 9 sheets of drawing figures, including drawing figure 5, were received in the Patent and Trademark Office (PTO) on December 13, 2001. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing December 13, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 9 sheets of drawings.

The return postcard constitutes *prima facie* evidence that 9 sheets of drawing figures, including drawing figure 5, were filed on December 13, 2001. MPEP 503. **The April 22, 2002 petition under 37 CFR 1.53(e) is granted.**

The \$130.00 petition fee charged in connection with the February 6, 2002 petition will be refunded to deposit account no. 02-4800.

The Revocation and Power of Attorney, filed June 7, 2002, has been entered and made of record. A courtesy copy of this decision will be mailed to the attorney who filed both petitions, Mr. Joseph P. O'Malley. All future correspondence concerning the above-identified application will be mailed to the above listed correspondence address of record.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of December 13, 2001, using the substitute drawing figures submitted with the April 22, 2002 petition. Office records will be corrected to show that 9 sheets of drawings were present on filing.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



E. Shirene Willis  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Joseph P. O'Malley  
Burns, Doane, Swecker & Mathis, L.L.P.  
P.O. Box 1404  
Alexandria, VA 22313-1404

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**REQUEST FOR PATENT FEE REFUND**

1 Date of Request: <u>7/12/02</u>		2 Serial/Patent # <u>10/617,212</u>	
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED
<input checked="" type="checkbox"/> Filing			\$
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		7 TOTAL AMOUNT OF REFUND	<u>\$ 130.00</u>
		8 TO BE REFUNDED BY:	
<input type="checkbox"/> Overpayment		Treasury Check	
<input checked="" type="checkbox"/> Duplicate Payment		Credit Deposit A/C #: <u>02--4800</u>	
<input checked="" type="checkbox"/> No Fee Due (Explanation):  <u>Drawing figure present on filing. Office mistake</u>			
11 REFUND REQUESTED BY:			
TYPED/PRINTED NAME: <u>E. Shirene Willis</u>		TITLE: <u>Petitions Atty</u>	
SIGNATURE: <u>E. Shirene Willis</u>		PHONE: <u>308-6712</u>	
OFFICE: <u>Office of Petitions</u>			
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APPROVED: <u>Ken Days</u>		DATE: <u>7/18/02</u>	

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